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EXAMINER
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VAN DOREN, BETH

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/034,369

Applicant(s)

CHRISMAN ET AL.

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11,13.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The following is a Final office action in response to communications received 08/04/03.

Claims 1 and 20-43 have been amended. Claims 1-43 are now pending in this application.

#### ***Response to Amendment***

2. Applicants amendments to claims 20-43 are sufficient to overcome the claim and numbering objections set forth in the previous office action.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Certified Marketing Services, Inc. ([www.certifiedmarketingservices.com](http://www.certifiedmarketingservices.com)).

5. As per claim 1, Certified Marketing Services, Inc. teaches a method for managing a store activity, said method comprising:

electronically receiving store information, said store information including information related to the stores (See page 1, sections 1 and 2, page 3, sections 2-6, page 6, sections 1 and 3, and page 7, section 3, wherein store information is received electronically);

electronically receiving information that relates to the product information (See page 1, section 1-2, page 3, sections 1-2, page 4, section 1, page 6, sections 3-4, page 7, section 4, and page 11, sections 1-3, wherein the tool electronically receives information relating to the product information of the store that allows for the ability to restock, reset, and perform other product

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related functions in the stores. The type of store (drug store, specialty retailers, etc) is also received by the tool, this type indicating the products offered by the store, as shown on page 11, section 1);

electronically receiving labor information, said labor information including information related to labor (See page 8, section 1, page 9, sections 1-4, and page 10, section 2, wherein the labor information related to the labor is electronically received);

electronically receiving labor requirements, said labor requirements representing estimates of time required to perform said store activity (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, section 4, and page 7, sections 1-3, wherein the labor requirements wherein the store specifies the approximation of the labor believed to be needed to fulfill the request);

receiving a request for labor to perform said store activity (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, section 4, and page 7, sections 1-3, wherein a request for labor to perform said store activity is received);

automatically determining an amount of said labor needed to perform said store activity using said store information, said labor information, and said labor requirements (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1 and 2, and page 13, sections 1 and 2, wherein Certified Marketing Services, Inc. determines the amount of labor needed for a location based on the automatic labor request and automatically posts the request as a contract for field workers. The determination uses store information, labor information, and labor requirements); and

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electronically notifying parties contributing said determined labor (See page 8 and page 9, section 1, page 10, sections 1 and 2, wherein the parties contributing to the determined labor are notified of the potential contract as well as notified when he/she receives the contract to complete the labor).

However, while Certified Marketing Services, Inc. receives information that allows workers to restock, reset, etc., Certified Marketing Services, Inc. does not expressly disclose receiving product information, this product information related to products.

Certified Marketing Services, Inc. receives information electronically that allows for the ability to restock, reset, and perform other product related functions in the stores, as stated in page 1, section 1-2, page 3, sections 1-2, page 4, section 1, page 6, sections 3-4, page 7, section 4, and page 11, sections 1-3. Restocks, resets, and these other product related functions involve specific products in the stores. Furthermore, the type of store (drug store, specialty retailers, etc) is received by the tool, this type indicating the products offered by the store, as shown on page 11, section 1. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to expressly receive product information electronically in order to increase the efficiency of the tool's planning capabilities by gathering all the specifics of the project.

6. As per claim 2, Certified Marketing Services, Inc. teaches a method wherein said store information further includes at least one of individual store characteristics, store locations, store departments, and store groups (See page 1, sections 1 and 2, page 3, sections 2-6, page 6, sections 1 and 3, and page 7, section 3, wherein store information is received electronically, this information including the store location and store group).

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7. As per claim 3, Certified Marketing Services, Inc. teaches a method further comprising providing at least one graphic representation of said stores in response to said electronically received store information (See page 11, section 3, wherein the tool provides computerized floor plans in response to the received store information). However, Certified Marketing Services, Inc. does not expressly disclose that said at least one graphic representation comprises at least one image of at least one store shelf, at least one store aisle, a store entrance, and a store façade.

Certified Marketing Services, Inc. discloses providing computerized floor plans of the store, as stated on page 11, section 3. Store shelves, aisles, entrances, and facades are all well known parts of a store and a store floor plan. It would have been obvious to one of ordinary skill in the art at the time of the invention to include shelves, aisles, entrances, and facades in the computerized floor plans of Certified Marketing Services, Inc. in order to more accurately represent the stores layout and the services provided at the stores.

8. As per claim 4, Certified Marketing Services, Inc. discusses a method wherein information is electronically received that relates to the product information (See page 1, section 1-2, page 3, sections 1-2, page 4, section 1, page 6, sections 3-4, page 7, section 4, and page 11, sections 1-3, wherein the tool electronically receives information relating to the product information of the store that allows for the ability to restock, reset, and perform other product related functions in the stores. The type of store (drug store, specialty retailers, etc) is also received by the tool, this type indicating the products offered by the store, as shown on page 11, section 1). However, Certified Marketing Services, Inc. does not expressly disclose receiving product information or that the product information further includes at least one of individual product characteristics, product categories, and manufacturers.

Certified Marketing Services, Inc. receives information electronically that allows for the ability to restock, reset, and perform other product related functions in the stores, as stated in page 1, section 1-2, page 3, sections 1-2, page 4, section 1, page 6, sections 3-4, page 7, section 4, and page 11, sections 1-3. Restocks, resets, and these other product related functions involve specific products in the stores. Furthermore, product characteristics, product categories, and manufacturers are old and well known information relating to a product. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to expressly receive product information electronically in order to increase the efficiency of the tool's planning capabilities by gathering all the specifics of the project.

9. As per claim 5, Certified Marketing Services, Inc. teaches a method, the method comprising determining an amount of said labor needed to perform said store activity (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1 and 2, and page 13, sections 1 and 2, wherein Certified Marketing Services, Inc. determines the amount of labor needed for a location based on the labor request and posts the request as a contract for field workers). However, Certified Marketing Services, Inc. does not expressly disclose that determining an amount of labor comprises estimating time requirement to perform said store activity.

Certified Marketing Services, Inc. teaches collecting a work request from a store and translating the work request into posting on a website for contracts to be filled by workers, these contracts with specific job requirements, as stated on page 6, sections 1-4, page 7, sections 1-2, and page 9, section 1. It would have been obvious to one of ordinary skill in the art at the time of

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the invention to expressly estimate the time requirements for contracts in order to more accurately staff projects in compliance with the client's requested time line and budget, as stated on page 4, section 1.

10. As per claim 6, Certified Marketing Services, Inc. discloses a method wherein said step of determining said amount of labor further comprises determining a total amount of labor needed to perform said store activity as a function of said store information, information relating to the products, and said labor information (See page 1, sections 1 and 2, page 3, sections 1-2, page 4, sections 1 and 2, page 6, sections 2, 3, and 4, page 7, sections 1-2 and 4, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1, 2, and 3, and page 13, sections 1 and 2, wherein Certified Marketing Services, Inc. determines the amount of labor needed for a location based on the labor request and posts the request as a contract for field workers. The number of workers and the contract requirements are a function of store information, labor information, and information related to the products of the store. The tool electronically receives information relating to the product information of the store that allows for the ability to restock, reset, and perform other product related functions in the stores. The type of store (drug store, specialty retailers, etc) is also received by the tool, this type indicating the products offered by the store, as shown on page 11, section 1). However, Certified Marketing Strategies, Inc. does not expressly disclose that the determined amount of labor includes a fair share amount of labor needed or specific product information.

Certified Marketing Services, Inc. receives information electronically that allows for the ability to restock, reset, and perform other product related functions in the stores, as stated in page 1, section 1-2, page 3, sections 1-2, page 4, section 1, page 6, sections 3-4, page 7, section



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4, and page 11, sections 1-3. Restocks, resets, and these other product related functions involve specific products in the stores. Furthermore, the type of store (drug store, specialty retailers, etc) is received by the tool, this type indicating the products offered by the store, as shown on page 11, section 1. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to expressly receive product information electronically in order to increase the efficiency of the tool's planning capabilities by gathering all the specifics of the project.

Furthermore, fair share is well known in labor industries. It would have been obvious to one of ordinary skill in the art at the time of the invention to determine hours required for each worker based on fair share requirements in order to increase the usefulness of the tool in the market by having the tool comply with labor standards.

11. As per claim 7, Certified Marketing Strategies, Inc. determining the requirements for the contracts assigned to each of the parties of the store activity (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1 and 2, and page 13, sections 1 and 2). However, Certified Strategies does not expressly disclose that fair share comprises identifying a total number of hours required for each of said parties with respect to said store activity.

Fair share is well known in labor industries. It would have been obvious to one of ordinary skill in the art at the time of the invention to determine hours required for each worker based on fair share requirements in order to increase the usefulness of the tool in the market by having the tool comply with labor standards.

12. As per claim 8, Certified Marketing Services, Inc. teaches a method wherein said labor information further includes at least one of identification of labor brokers, identification of

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manufacturers, and identification of labor forces (See page 8, section 1, page 9, sections 1-4, and page 10, section 2, wherein the labor information related to the labor is electronically received, wherein the labor information includes identification of the companies labor force).

13. As per claim 9, Certified Marketing Services, Inc. discloses a method wherein said store activity is at least one of a store reset, a store remodel, and a category implementation (See page 1, sections 1-2, page 2, section 1, page 3, section 1, page 6, sections 2 and 4, page 9, section 1, page 11, sections 1 and 3, and page 13, sections 1 and 2, wherein the store activity is at least one of store resets, remodels, and category implementation).

14. As per claim 10, Certified Marketing Services, Inc. teaches a method, the method comprising determining an amount of said labor needed to perform said store activity (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1 and 2, and page 13, sections 1 and 2, wherein Certified Marketing Services, Inc. determines the amount of labor needed for a location based on the labor request and posts the request as a contract for field workers).

Certified Marketing Services, Inc. further discloses presenting, on a web site, contracts to be filled by workers, these contracts with job requirements (See page 9, sections 1-2, wherein guidelines are provided for job assignments).

However, Certified Marketing Services, Inc. does not expressly disclose that the determined amount of labor is presented as a number of hours.

Certified Marketing Services, Inc. teaches collecting a work request from a store and translating the work request into posting on a website for contracts to be filled by workers, these

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contracts with specific job requirements, as stated on page 6, sections 1-4, page 7, sections 1-2, and page 9, section 1. It is old and well-known that a jobs requirements includes the amount of time to be spent on the job. It would have been obvious to one of ordinary skill in the art at the time of the invention to expressly present the determined labor as a number of hours in order to more accurately staff projects in compliance with the client's requested time line and budget, as stated on page 4, section 1.

15 As per claim 11, Certified Marketing Services, Inc. teaches a method further comprising generating a plurality of reports, said plurality of reports including an invoice report, a billing report, an exception report, and an all store remodel report (See page 1, section 2, page 3, sections 2-6, page 4, sections 1-4, page 7, sections 2-3, page 9, section 4, page 10, section 3, and page 11, section 3, wherein a plurality of reports are generated including an invoice report, a billing report, and an all store remodel report). However, Certified Marketing Services, Inc. does not expressly disclose a fair share report and a noncompliance report.

Certified Marketing Services, Inc. discloses tracking and storing field worker performance as well as generating exception reports, as stated on page 3, section 4, page 4, sections 2 and 4, page 9, section 1, and page 10, section 1. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a fair share report and a noncompliance report in order to increase the applicability of the system to the needs of the users (the clients, management, the workers) by including more functionalities, as stated on page 1, section 2, and page 3, section 3.

16. As per claim 12, Certified Marketing Services, Inc. discloses a method further comprising electronically receiving feedback from said parties contributing said determined

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labor (See page 4, section 4, page 9, section 4, and page 10, section 3, wherein the tool electronically receives feedback from the workers who perform the labor).

17. As per claim 13, Certified Marketing Services, Inc. teaches a method further comprising transmitting a feedback call form to enable parties contributing labor to said store activity to submit feedback regarding said store activity (See page 9, section 4, and page 10, section 3, wherein a feedback call form is transmitted to allow the workers performing the labor to submit feedback regarding their labor).

18. As per claim 14, Certified Marketing Services, Inc. teaches a method further comprising transmitting a feedback call form to enable parties contributing labor to said store activity to submit feedback regarding said store activity (See page 9, section 4, and page 10, section 3, wherein a feedback call form is transmitted to allow the workers performing the labor to submit feedback regarding their labor). However, Certified Marketing Services, Inc. does not expressly disclose defining a first question regarding said store activity, identifying a format for a first answer to said first question, defining a second question in response to said first answer to said first question, and defining a third question in response to a third answer to said first question.

Certified Marketing Services, Inc. teaches an online reporting means for feedback.

Branching questions are well known in dynamic online forms. It would have been obvious to one of ordinary skill in the art at the time of the invention to define a first question regarding said store activity, identify a format for a first answer to said first question, define a second question in response to said first answer to said first question, and define a third question in response to a third answer to said first question in order to efficiently elicit the needed information in a structured and organized manner.

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19. As per claim 15, Certified Marketing Services, Inc. teaches a method further comprising modifying at least one of said store information, product information and labor information (See page 1, section 2, page 3, sections 5, page 6, sections 1 and 3, and page 7, section 3, wherein store information includes the report capabilities and needs of the store and Certified Marketing Services is willing to adapt to the needs at a moments notice).

20. As per claim 16, Certified Marketing Services, Inc. teaches a method further comprising determining a degree of compliance of each of said parties contributing said labor to said store activity (See page 3, section 4, page 4, sections 1-4, and page 9, sections 2-3, wherein a degree of compliance of each worker is determined).

21. As per claim 17, Certified Marketing Services, Inc. teaches a method where said compliance comprises performing said labor for said store activity and transmitting feedback directed to said labor for said store activity (See page 3, section 4, page 4, sections 1-4, and page 9, sections 2-3, wherein the labor is performed and feedback is transmitted that is aimed at accessing the labor on the store activity (by both the client and the worker)).

22. As per claim 18, Certified Marketing Services, Inc. discloses a method further comprising assigning penalties to parties for noncompliance (See page 4, section 2, and page 9, section 3, wherein penalties are assigned to parties for noncompliance). However, Certified Marketing Services, Inc. does not expressly disclose that these penalties are fines.

Certified Marketing Services, Inc. teaches a system wherein a worker is punished for noncompliance with an assigned contract, as stated on page 4, section 2, and page 9, section 3. Fines are old and well known punishments. It would have been obvious to one of ordinary skill in the art to include fines in the punishment of Certified Marketing Services, Inc. in order to

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decrease the number of workers that do not comply with their assigned contracts by providing an larger punishment for noncompliance.

23. As per claim 19, Certified Marketing Services, Inc. teaches a method for using a user terminal coupled to a site processor across a communication network to manage a store activity, said method comprising:

electronically receiving store information, said store information including at least one of individual store characteristics, store locations, store departments, and store groups (See page 1, sections 1 and 2, page 3, section 6, and page 6, sections 1 and 3, wherein store information is received electronically, this information including the store location and store group);

electronically receiving information that relates to the product information (See page 1, section 1-2, page 3, sections 1-2, page 4, section 1, page 6, sections 3-4, page 7, section 4, and page 11, sections 1-3, wherein the tool electronically receives information relating to the product information of the store that allows for the ability to restock, reset, and perform other product related functions in the stores. The type of store (drug store, specialty retailers, etc) is also received by the tool, this type indicating the products offered by the store, as shown on page 11, section 1);

electronically receiving labor information, said labor information including at least one of labor brokers, manufacturers, and labor forces (See page 8, section 1, page 9, sections 1-4, and page 10, section 2, wherein the labor information related to the labor is electronically received, wherein the labor information includes identification of the companies labor force);

electronically receiving labor requirements, said labor requirements representing estimates of time required to perform said store activity for each of the categories (See page 1,

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sections 1 and 2, page 4, sections 1 and 2, page 6, section 4, and page 7, sections 1-3, wherein the labor requirements wherein the store specifies the approximation of the labor believed to be needed to fulfill the request);

determining a total amount of labor needed to perform said store activity as a function of at least one of said store information, said product information, said labor information, and said labor requirements (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1 and 2, and page 13, sections 1 and 2, wherein Certified Marketing Services, Inc. determines the amount of labor needed for a location based on the labor request and posts the request as a contract for field workers. The number of workers and the contract requirements are a function of at least store information and labor requirements);

electronically scheduling said store activity, said step of electronically scheduling including electronically notifying parties contributing labor to said store activity and transmitting details of said store activity to said parties (See page 4, sections 1-2, and page 9, sections 1-2, wherein the store activity is scheduled with Certified Marketing Services, Inc. See page 8 and page 9, section 1, page 10, sections 1 and 2, wherein the parties contributing to the determined labor are notified of the potential contract as well as notified when he/she receives the contract to complete the labor); and

electronically receiving feedback from said parties contributing said labor to said store activity (See page 4, section 4, page 9, section 4, and page 10, section 3, wherein the tool electronically receives feedback from the workers who perform the labor).

However, Certified Marketing Services, Inc. does not expressly disclose receiving product information, this product information related to products, or determining a fair share of a total amount of labor needed to perform said store activity.

Certified Marketing Services, Inc. receives information electronically that allows for the ability to restock, reset, and perform other product related functions in the stores, as stated in page 1, section 1-2, page 3, sections 1-2, page 4, section 1, page 6, sections 3-4, page 7, section 4, and page 11, sections 1-3. Restocks, resets, and these other product related functions involve specific products in the stores. Furthermore, the type of store (drug store, specialty retailers, etc) is received by the tool, this type indicating the products offered by the store, as shown on page 11, section 1. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to expressly receive product information electronically in order to increase the efficiency of the tool's planning capabilities by gathering all the specifics of the project.

Furthermore, fair share is well known in labor industries. It would have been obvious to one of ordinary skill in the art at the time of the invention to determine hours required for each worker based on fair share requirements in order to increase the usefulness of the tool in the market by having the tool comply with labor standards.

24. As per claims 20, 21, 22, 23, 24, 25, 26, 27-30, and 31, claims 20, 21, 22, 23, 24, 25, 26, 27-30, and 31 are method claims and are rejected using the same art relied upon in the rejection of the method of claims 9, 34, 35, 11, 13, 14, 7, 15-18, and 3, respectively.

25. As per claim 32, Certified Marketing Services, Inc. discloses a system for communicating with a user terminal across a communication network to manage store activity, said system comprising:



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a site processor adapted to receive requests from said user terminal through said communications network (See pages 6-7 and 9-10, which discloses a website operable to receive requests from a user over a communications network);

a first software module operating on said site processor, said first software module determining a total amount of labor needed to perform said store activity as a function of at least one of store information, product information, labor information, and labor requirements (See page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1 and 2, and page 13, sections 1 and 2, wherein Certified Marketing Services, Inc. determines the amount of labor needed for a location based on the labor request and posts the request as a contract for field workers. The number of workers and the contract requirements are a function of at least store information and labor requirements);

a second software module operating on said site processor, said second software module scheduling said store activity, said second software module further notifying parties contributing labor to said store activity and transmitting details of said store activity to said parties (See page 4, sections 1-2, and page 9, sections 1-2, wherein the store activity is scheduled with Certified Marketing Services, Inc. See page 8 and page 9, section 1, page 10, sections 1 and 2, wherein the parties contributing to the determined labor are notified of the potential contract as well as notified when he/she receives the contract to complete the labor and the party is transmitted details concerning the contracted activity); and

a third software module operating on said site processor, said third software module electronically receiving feedback from said parties contributing labor to said store activity (See

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page 4, section 4, page 9, section 4, and page 10, section 3, wherein the tool electronically receives feedback from the workers who perform the labor).

However, Certified Marketing Services, Inc. does not expressly disclose determining a fair share of a total amount of labor needed to perform said store activity.

Fair share is well known in labor industries. It would have been obvious to one of ordinary skill in the art at the time of the invention to determine hours required for each worker based on fair share requirements in order to increase the usefulness of the tool in the market by having the tool comply with labor standards.

26. As per claims 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 43, these claims are software implementations of the method of claims 9, 21, 22, 11, 13, 14, 7, 15, 16, 17, and 3, respectively, and are therefore rejected using the same art as relied upon above.

### *Response to Arguments*

27. Applicant's arguments with regard to the rejections based on Certified Marketing Services, Inc. ([www.certifiedmarketingservices.com](http://www.certifiedmarketingservices.com)) have been fully considered, but they are not persuasive. In the remarks, the Applicant argues that (1) Certified Marketing Services, Inc. (CMS) does not teach or suggest automatically determining the amount of labor required to perform the store activity using store information, product information, labor information, and labor requirements (i.e. there is no teaching that the information electronically collected is used in an automated fashion to make a determination about the amount of labor required to perform the store activity), (2) the types of information captured electronically by Certified Market Services, Inc. cannot be used to determine the labor required, (3) the fact that the store is, for

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example, a drug store does not provide the kind of product detail needed to determine labor needed, (4) does not teach or suggest making a “fair share” determination, as explained in the specification, which is a difficult calculation that is not simply done on a volume basis and that Examiner has misunderstood the meaning of “fair share”.

In response to argument (1) of the Applicant, Examiner respectfully disagrees. CMS does, in a mechanized fashion, determine the labor requirements by using the Internet and online data collection to receive information such as labor information, labor requirements, store information, etc. which is used to determine labor required and then transmit the determined requirements over the network. Based on the language of the claimed limitation, it is not clear as to what are the exact requirements of the term “automatically”. Automatically, in its broadest reasonable interpretation, would merely mean routinely or in a mechanized manner. CMS routinely determines the labor requirements by collecting the same standard information from each customer, using this information to determine a program, and provides the customer with the service with online reporting. CMS uses a computer to do so. See at least page 1, sections 1 and 2, page 4, sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 8, page 9, sections 1, 4, and 5, page 10, sections 1 and 3, page 11, sections 1 and 2, and page 13, sections 1 and 2. If there is something more specific meant or required by the term automatically, it should be recited in the claims.

In response to argument (2) of the Applicant, Examiner respectfully disagrees and points out that the limitations recite “electronically receiving store information, said store information including information related to the stores”, “electronically receiving product information, said product information including information related to products”, “electronically receiving labor

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information, said labor information including information related to labor”, “electronically receiving labor requirements, said labor requirements representing estimates of time required to perform said store activity”, “receiving a request for labor to perform said store activity”, and “automatically determining an amount of said labor needed to perform said store activity using said store information, said product information, said labor information, and said labor requirements”. Based on these limitations, there is no specific requirement of how the explicitly recited information is used to determine the amount of labor, if it is used exclusively, if other information is included with explicitly recited information to make the determination, etc. Therefore, CMS does using the received information of store information, information that relates to the product information, labor information, and labor requirements to determine the labor required (Examiner asserted a § 103 rejection above based on the term product information. Examiner asserts that the use of product information or information that relates to the product information does not change the basis or logic of the argument here presented). See at least page 1, sections 1 and 2, page 3, sections 1-6, page 4, section 1 and 2, page 6, sections 1, 3, and 4, and page 7, sections 1-4, page 8, section 1, page 9, sections 1-4, page 10, section 2, and page 11, sections 1-3.

In response to argument (3) of the Applicant, Examiner respectfully points out again that how the received information is used to determine the labor required is not explicitly claimed, as discussed above in response to argument (2). Therefore, examiner maintains that since CMS teaches receiving information that relates to the product information, it would be obvious to receive product information.

In response to argument (4) of the Applicant, In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "fair share" determinations using difficult calculations, these difficult calculations not claimed) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Examiner points out that there is no specific way "fair share" is used for determinations and no specific meaning for "fair share" recited in the claims. Examiner also points out that the term "fair share" has multiple meanings in merchandising, such as "fair share" labor rules in unions. Therefore, Examiner maintains the § 103 rejection set forth above.

#### ***Conclusion***

**28. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (703) 305-3882.

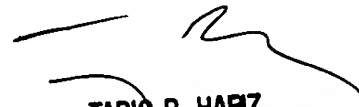
The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

*bvd*  
bvd

October 7, 2003

  
TARIQ R. HAFIZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 380